85-933

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

SALVATORE CARROLLO and ALFRED E. SANDRIDGE,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Are Defendants denied their right to a fair trial when evidence of two conspiracies to counterfeit are admitted at trial when the evidence presented only connected them with the first conspiracy, not the second?

2. Are Defendants denied their Sixth Amendment right to a fair trial when the prosecution makes statements in its closing argument which are unfounded by the record and which indicate to the jury that the Defendants are so dangerous that the government witness' life is threatened?

3. Does a government agent's failure to report or investigate an ongoing felony of conspiracy to counterfeit which he had been advised of, rise to the level of outrageousness so as to deny Defendants, who were victimized by the Conspiracy, due process of law as guaranteed by the Fifth Amendment of the United States Constitution?

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OPINION BELOW

The opinion of the Court of Appeals not yet reported, appears in the Appendix hereto. No opinion was rendered by the District Court for the Western District of Missouri.

JURISDICTION

The opinion of the Court of Appeals for the Eighth Circuit was entered on August 27, 1985. A timely filed Petition for Rehearing was denied on October 4, 1985, and this Petition for Certiorari was filed within sixty (60) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Petitioners Carrollo and Sandridge were convicted of one Count of Conspiracy to Counterfeit in violation of Title 18, United States Code, Section 371, and one Count

of counterfeiting in violation of Title 18, United States Code, Sections 471 and 472. The District Court had jurisdiction of this case under Title 18, United States Code, Section 3231. Jurisdiction of the United States Court of Appeals for the Eighth Circuit was invoked under Title 28, United States Code, Section 1291. Petitioners claimed error in their Brief on Appeal on the grounds that (1) the Court failed to grant Petitioners' motions to dismiss, direct a verdict or, in the alternative, for a new trial; (2) the Court admitted evidence of multiple conspiracies; (3) the Court failed to dismiss because of the gross misconduct of a government agent; (4) the Court failed to grant a mistrial upon the highly inflammatory and prejudicial final argument of the prosecution.

The record below discloses evidence relating to two separate and distinct conspiracies: (1) one occurring in 1982 in Kansas City, Missouri and Des Moines, Iowa and (2) the other occurring in 1983 in Dallas, Texas. Although the evidence presented connected Petitioners to only the first conspiracy, the lower Courts allowed evidence of the later conspiracy to be admitted.

The prosecution's main witness was a paid informant of the Federal Bureau of Investigation (Bobby Gene Jones). Bobby Gene Jones was a key participant in the conspiracies to counterfeit and he reported the fact that he was involved in a conspiracy to counterfeit, to Agent Steinhauser of the Federal Bureau of Investigation. In spite of such reports, no action was taken by Agent Steinhauser to thwart such actions and Bobby Gene Jones, a government employee, was allowed to continue his activities.

At the close of all the evidence, the prosecution, in its closing argument, indicated to the jury that the in-

formant, Bobby Gene Jones, was to be placed in a witness protection program so that his life could be protected from Carl Civella (a notorious alleged gang leader in Kansas City) and Petitioners. There was no foundation for linking Petitioners' names with Carl Civella or for indicating that Petitioners had threatened Bobby Gene Jones' life.

REASONS FOR GRANTING THE WRIT

1. The Eighth Circuit Court Of Appeals, In Its Decision, Below, Has So Far Sanctioned A Departure From The Accepted Course Of Judicial Proceedings As To Call For An Exercise Of This Court's Power Of Supervision In That Evidence Of Multiple Conspiracies Was Admitted At Petitioners' Trial While Petitioners Were Charged With Involvement In Only One Conspiracy.

This Court has stated that Defendants in a criminal trial have a right not to be tried en masse for the conglomeration of distinct and separate offenses committed by others. *Kotteakos v. United States*, 328 U.S. 750 (1946). The Eighth Circuit's affirmance of Petitioners' convictions has resulted in a denial of this right and Petitioners' Sixth Amendment right to a fair trial has thereby been so greatly infringed upon as to require an exercise of this Court's power of supervision.

The Eighth Circuit, in its Opinion below, stated that one overall conspiracy, rather than multiple conspiracies was shown in this case. See p. 6 of Appendix hereto. Such a finding is clearly contrary to the evidence presented in this case. There were two distinct conspiracies

shown: (1) the first of which began in 1982 and (2) the second of which began in 1983.

Both of these conspiracies had similar goals; to produce and profit from the passing of counterfeit bills. The evidence presented at trial, however, shows that two separate conspiracies were involved. The 1982 conspiracy involved a gang of inept, would be counterfeitors stumbling over each other in an attempt to get their scheme off the ground. The 1983 conspiracy, in contrast, exhibited an organized, well-planned scheme instituted by professionals. The 1982 conspiracy ended without any bills being printed while the 1983 conspiracy did result in bills being passed.[1]

Petitioners were alleged to have had a connection with the 1982 conspiracy and were not even mentioned in connection with the 1983 conspiracy. Although the evidence connected Petitioners with only one conspiracy, the jury was presented with evidence of both conspiracies. By refusing to reverse Petitioners' convictions, the Eighth Circuit has sanctioned the Trial Court's decision to admit evidence of multiple conspiracies when Petitioners were not shown to be connected with the second conspiracy. Such a procedure merely causes a transference of guilt between conspiracies and conspirators, and confuses the jury. The result has been to greatly prejudice Petitioners'

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1. The record discloses that one counterfeiting operation took place in Kansas City, Missouri and Des Moines, Iowa in early 1982. The second counterfeiting operation took place in Dallas, Texas some six or seven months later. The counterfeit money which was passed in Dallas was not printed on the printing press involved in the 1982 conspiracy. While the record does disclose a few common actors in the conspiracies, the mere existence of common actors does not transform multiple conspiracies into one conspiracy. *U. S. v. Varelli*, 407 F.2d 735 (7th Cir. 1969). Further, there was no evidence of any additional acts being committed by Petitioners in furtherance of the objectives of the 1983 conspiracy. See p. 5 of Appendix hereto.

right not to be tried en masse for the conglomeration of distinct and separate offenses committed by others as stated by this Court in *Kotteakos, supra.* This Court's supervision is necessary in order to ensure that the Sixth Amendment right to a fair trial does not disappear, and to ensure that the protections set forth in *Kotteakos, supra* continue to be afforded to Defendants.

2. The Eighth Circuit Court Of Appeals, In Its Decision Below, Has So Far Sanctioned A Departure From The Accepted Course Of Judicial Proceedings As To Call For An Exercise Of This Court's Power Of Supervision In That The Prosecutor's Closing Argument At Petitioners' Trial Was So Inflammatory And Prejudicial As To Deny Petitioners' Sixth Amendment Right To A Fair Trial And Impartial Consideration By The Jury.

Petitioners' Sixth Amendment right to a fair trial has been so greatly infringed upon by the statements of the Prosecuting Attorney in his closing argument as to deny Petitioners that right. An exercise of this Court's power of supervision is necessary in order to protect the constitutional rights to which Defendants are entitled and to ensure that statements such as these made by the prosecutor will not be permitted in the future.

The record below shows that Petitioners' counsel timely objected to statements of the prosecution and requested a mistrial. The lower Court denied the request, while admitting the possibility of error. The Eighth Circuit Court of Appeals, in its decision, merely stated that Petitioners' contentions are without merit. (See p. 6 of Appendix). By so doing, the Court of Appeals has

sanctioned highly prejudicial and inflammatory statements by the prosecution which have resulted in Petitioners' constitutional right to a fair trial being greatly diminished.

The objectionable argument by the prosecution implied that Petitioners were a threat to the government witness (Jones). The argument further gratuitously, and without any foundation, linked Petitioners' names with the name of the most notorious of alleged Kansas City gangland leaders (Carl Civella). The objectionable argument was as follows:

> "He (Jones) was in the hole in San Diego, he told you, because he had to be segregated before he could go in the witness protection program. *That is why he was in the hole for his own protection.* . . . By that time, folks, he doesn't need any help. He is already in the witness protection program. The monkey is already off his back. *He knows that tomorrow when he wakes up he is going to be breathing,* which is something he doesn't know when he is on the streets, and he is an informant for the FBI in Kansas City. *That is a very perilous position to be in. You have to always look over your shoulder.* . . . When he gets out he will be relocated somewhere else. *So he doesn't need to worry about Carl Civella. He doesn't need to worry about the Sandridge boys. He doesn't need to worry about Sam Carrollo.*"

This argument was completely unfounded by the record and merely constitutes the prosecution's attempt to inflame and unfairly prejudice the jury. If this kind of conduct by the prosecution is allowed to continue, Defendants in the future will have such a greatly diminished ability to convince the jury of their innocence that their Sixth Amendment right to a trial by a fair and impartial

jury will be ineffective. This Court's power of supervision is needed in this case to curtail unfounded and accusatory statements by prosecutors so that the Constitutional right to a trial by a fair and impartial jury can be preserved.

3. The Eighth Circuit Court Of Appeals, In Its Decision Below, Has So Far Sanctioned The Misconduct Of A Government Agent As To Call For An Exercise Of This Court's Power Of Supervision In That Such Misconduct Was So Outrageous As To Invoke The Protection Of Due Process.

This Court has stated that a situation could arise where agents of the government behave in such an outrageous manner as to invoke the protection of due process. *United States v. Russell*, 411 U.S. 423 (1973). Definitive guidelines as to what kind of behavior falls within the outrageousness this Court has referred to are greatly needed. The actions of government agents in this case reached such a level of outrageousness that Petitioners were denied their Fifth Amendment right to due process of law and the exercise of this Court's supervision is necessary in order to ensure that these Petitioners, as well as future Defendants in similar situations are afforded their due process rights.

The prosecution's main witness in this case was a paid informant of the Federal Bureau of Investigation. The witness reported regularly to the F.B.I. (more particularly, to Agent Steinhauser) concerning the counterfeiting scheme which is the subject of this case. In spite of receiving information about a currently in-progress felony, however, Agent Steinhauser did no further investigation, did not inform the appropriate law enforcement agents and

in fact did not even inform his own superiors. Instead of taking the appropriate action to thwart further progress of an ongoing felony, Agent Steinhauser chose to sit back and allow the felony to continue. Agent Steinhauser's inaction made the culmination of the counterfeiting scheme possible. His inaction, however, resulted in innocent persons, such as the Petitioners, being victimized by the actions of the government informant.

The Eighth Circuit has recognized that, apart from any question as to predisposition, the actions of government agents may at times be so outrageous, or fundamentally unfair, as to deprive a Defendant of due process of law. *United States v. Quinn,* 543 F.2d 640 (8th Cir. 1976). Similar holdings exist in other Circuits: *United States v. McQuinn,* 612 F.2d 1193 (9th Cir. 1980); *United States v. Nunez-Rios,* 622 F.2d 1093 (2nd Cir. 1980). The actions of Agent Steinhauser in this case are so outrageous as to require the exercise of this Court's supervision so that the boundaries within which government agents can act as set forth in *U. S. v. Russell, supra,* can be clearly defined.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

THOMAS J. COX

APPENDIX

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

No. 84-2024

United States of America,
Appellee,

v.

Alfred E. Sandridge,
a/k/a Eddie,
Appellant.

Appeal from the United States District Court
for the Western District of Missouri

No. 84-2043

United States of America,
Appellee,

v.

Salvatore Carrollo,
Appellant.

Appeal from the United States District Court
for the Western District of Missouri

Submitted: March 14, 1985
Filed: August 27, 1985

Before JOHN R. GIBSON, Circuit Judge, FLOYD R. GIBSON, Senior Circuit Judge, and BOWMAN, Circuit Judge.

BOWMAN, Circuit Judge.

Defendants Alfred E. ("Eddie") Sandridge and Salvatore ("Sam") Carrollo each were convicted by a jury of conspiring to counterfeit United States currency in violation of 18 U.S.C. § 371 (Count I) and of willfully causing the counterfeiting of United States currency in violation of 18 U.S.C. § 471 (Count II). Defendants appeal from the judgment of the District Court[1] that was entered upon the conviction. We affirm.

It is undisputed that in late 1981, a counterfeiting scheme was launched in Kansas City, Missouri. It appears from the record that the instigator of this operation was Woodie Sandridge, and that the aims of the operation were to produce and reap profits from the passing of counterfeit twenty-dollar bills. Among those asked to participate was Bobby Gene Jones. Unbeknownst to Woodie Sandridge, however, Jones had been a paid government informant since 1978.

The record contains a great deal of evidence concerning numerous individuals who during late 1981 and early 1982 provided "expertise" and start-up capital for the operation and who were involved in acquiring the necessary supplies and equipment. It is the testimony of Jones, the government's principal witness at trial, that directly links the defendants to the operation. Jones testified that in the spring of 1982, defendants contributed significant amounts of capital to finance further the counterfeiting operation started by Woodie Sandridge.

Jones was arrested in California in late June 1982,[2] and shortly thereafter, entered the Federal Witness Pro-

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1. The Honorable Elmo B. Hunter, Senior United States District Judge for the Western District of Missouri.

2. Jones apparently was arrested on unrelated state charges.

tection Program. There is no indication in the record that prior to Jones's arrest any counterfeit currency actually was produced or passed by the involved individuals.

In February 1983, Woodie Sandridge supplied three individuals with counterfeit twenty-dollar bills and sent them to Dallas, Texas to pass the bills. One of the individuals was arrested in Dallas.

The government's theory of this case essentially is that a single, overall conspiracy to counterfeit began in late 1981 and terminated after the arrest of the individual who passed counterfeit twenty-dollar bills in Dallas. Defendants thus were charged in Count I with conspiracy and in Count II with willfully causing the counterfeiting of United States currency, i.e., partially financing Woodie Sandridge's counterfeiting operation, which act caused the production of the counterfeit twenty-dollar bills that were passed in Dallas, Texas in February 1983. Defendants contend, however, that there were two conspiracies. They argue that the first conspiracy began in late 1981 and ended with the arrest of Jones in late June 1982. This argument is founded upon defendants' characterization of Jones as the principal conspirator and upon their claim that his arrest signaled the end of the conspiracy that he had steered since late 1981. According to defendants, a second conspiracy began and ended in early 1983.

In conformity with their theory of the case, defendants' chief claims on appeal are (1) that they are entitled to reversal on Count II (willfully causing the counterfeiting of currency) because there was no evidence directly linking them to the production of the particular bills that were passed in Dallas in February 1983, and (2) that since there was no evidence linking them to this "1983 conspiracy," the District Court's admission of evi-

dence concerning the events of 1983 was erroneous and improperly influenced the jury's consideration of defendants' involvement in the "1981-82 conspiracy," thus entitling them to a reversal on Count I. Because we have determined that the record supports the government's position that defendants participated in a single, overall conspiracy to counterfeit that began in late 1981, lasted until February 1983, and included the passing of counterfeit twenty-dollar bills in Dallas in February 1983, we reject these claims by defendants.

At the outset, we note that the record contains evidence negating defendants' claim that Jones was the principal conspirator, or in fact that he was a conspirator at all. Jones testified that he never intended to join the conspiracy and that he took various steps unknown to the conspirators to thwart its objectives. Of course, Jones's actions might have led the true conspirators to believe that he was one of them, but it is not surprising that Jones would maintain such an appearance to avoid being identified as a government informant. Furthermore, there is evidence that Woodie Sandridge was indeed the principal conspirator; there is evidence that he instigated the conspiracy, that he was in control of the operation when defendants contributed operating capital, and that he remained in control when he supplied individuals with counterfeit twenty-dollar bills and sent them to Dallas to pass those bills. Because we believe the jury easily could have viewed the evidence as establishing that Woodie Sandridge was the driving force behind this conspiracy, we reject defendants' allegation that the conspiracy must have ended with Jones's arrest in June 1982.

It also is clear from the record that at the time this operation was commenced by Woodie Sandridge, the ob-

jectives of the operation were to produce, and to profit from the passing of, counterfeit twenty-dollar bills. Those objectives did not change when, according to Jones's testimony, defendants joined the scheme by providing operating capital.[3] We acknowledge that there is no evidence of any additional acts being committed by defendants in furtherance of these objectives.[4] But neither is there any evidence that these objectives, which had been those of the operation since late 1981, (and which became the objectives of defendants when they infused the operation with working capital) were abandoned. The jury reasonably could conclude that it was these continuing objectives that finally were being achieved when Woodie Sandridge provided individuals with bogus twenty-dollar bills to be passed in Dallas.

"To resolve the question of whether the government's proof showed that one or multiple conspiracies existed, we must determine 'whether there was one overall agreement to perform various functions to achieve the objectives of the conspiracy.'" *United States v. DeLuna*, 763 F.2d

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3. The jury reasonably could have based its finding that defendants were connected to this counterfeiting scheme on Jones's testimony alone. There was, however, other evidence which corroborated Jones's testimony; Jones's former wife testified that although she did not hear their conversations, she went with Jones on at least one occasion to a business operated by defendants so that Jones could meet with Woodie Sandridge and both defendants, and that she had been to that business location on numerous occasions when Jones met with defendant Eddie Sandridge. We note that the jury was given the opportunity to weigh Jones's testimony in light of Jones's history, i.e., that he was a paid informant, that he admitted to having given perjured testimony in the past, and that he was a convicted criminal.

4. The lapse of time between defendants' contributions of capital and the events of early 1983 does not require that this case be viewed as one involving multiple conspiracies. *See United States v. Ben M. Hogan Co.*, No. 84-1757, slip op. at 16 n.14 (8th Cir. July 25, 1985).

897, 918 (8th Cir. 1985) (quoting *United States v. Jackson*, 696 F.2d 578, 582 (8th Cir. 1982), *cert. denied*, 460 U.S. 1073 (1983)). Having reviewed the record and having considered defendants' arguments, we hold that the evidence establishes that an overall agreement to counterfeit began in late 1981, was joined by defendants in early 1982, and resulted in the production and passing for profit of counterfeit twenty-dollar bills in Dallas in February 1983. Defendants thus were properly convicted on Counts I and II.

Defendants also allege misconduct on the part of a government agent and the prosecuting attorney. We have considered both of these claims and find them to be without merit.

The convictions are affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

Nos. 84-2024/2043-WM

United States of America,
Appellee,

vs.

Alfred E. Sandridge, etc., et al.,
Appellants.

Appeals from the United States District Court
for the Western District of Missouri

Appellants' petition for rehearing has been considered by the Court and is hereby denied.

October 4, 1985